

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,)
et al,)
5 Plaintiffs,)
6) CA No. 03-10395-NMG
vs.) CA No. 05-10201-NMG
7)
8 FOREST LABORATORIES, INC.,)
et al,)
9 Defendants.

10
11 BEFORE: THE HONORABLE NATHANIEL M. GORTON

12
13 STATUS CONFERENCE

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15
16 John Joseph Moakley United States Courthouse
Courtroom No. 4
17 One Courthouse Way
Boston, MA 02210
18 Friday, August 14, 2009
12:10 p.m.

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21 Cheryl Dahlstrom, RMR, CRR
22 Official Court Reporter
John Joseph Moakley United States Courthouse
23 One Courthouse Way, Room 3209
Boston, MA 02210
24 Mechanical Steno - Transcript by Computer
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1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY
3 By: Gregg D. Shapiro, AUSA
4 One Courthouse Way
Boston, Massachusetts 02210
On behalf of the United States of America.

5 Suzanne E. Durrell, Esq.
6 180 Williams Avenue
Milton, Massachusetts 02186
On behalf of Christopher R. Gobble.

7 BOISES, SCHILLER & FLEXNER, LLP
8 By: Robert A. Magnanni, Esq., and
Eric H. Jaso, Esq.
9 150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
10 On behalf of Joseph Piacentile.

11 SUGARMAN, ROGERS, BARSHAK & COHEN, P.C.
12 By: Andrew B. Kanter, Esq.
13 101 Merrimac Street
Boston, Massachusetts 02114-4737
- and -

14 DeBEVOISE & PLIMPTON
By: Christopher K. Tahbaz, Esq., and
Kristin D. Kiehn, Esq.
15 919 Third Avenue
New York, New York 10022-3902
16 On behalf of Forest Laboratories, Inc.

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1 P R O C E E D I N G S

2 THE CLERK: This is Civil Action 03-10395 and
3 05-10201, Forest Laboratories matters. Will counsel please
4 identify themselves for the record.

5 MR. SHAPIRO: Greg Shapiro for the United States, your
6 Honor.

7 THE COURT: Good afternoon, Mr. Shapiro. Why don't we
8 go along the front table first.

9 MR. KANTER: Good morning, your Honor. Andrew Kanter
12:10 10 from Sugarman, Rogers, Barshak & Cohen for Forest Laboratories.
11 With me is Chris Tahbaz and Kristin Kiehn from DeBevoise &
12 Plimpton, also counsel for Forest. Thank you very much, your
13 Honor, for granting the motions to allow them to appear in this
14 case this morning.

15 THE COURT: Good morning -- rather, actually, it's
16 good afternoon. Mr. Kanter, Mr. Tahbaz -- is that how you
17 pronounce it?

18 MR. TAHBAZ: Yes, your Honor.

19 THE COURT: And Miss Kiehn.

12:10 20 MR. KIEHN: Good afternoon.

21 THE COURT: In the back we have?

22 MS. DURRELL: Good afternoon, your Honor. Suzanne
23 Durrell. I represent Mr. Gobble and the '03 civil action.

24 THE COURT: Yes, Miss Durrell, good afternoon.

25 MR. MAGNANNI: Good afternoon, your Honor. Bob

1 Magnanni and Eric Jaso representing Doctor Piacentile in the
2 '05 action.

3 THE COURT: Mr. Magnanni and?

4 MR. JASO: Mr. Jaso, your Honor, J-a-s-o, pronounced
5 Haso (phon). I believe I was permitted pro hoc last year.

6 THE COURT: Mr. Jaso, good afternoon to you. And you
7 represent the intervener, Piacentile?

8 MR. MAGNANNI: Piacentile, yes, your Honor.

9 THE COURT: Piacentile. I butchered that name.

12:11 10 We're here, counsel, at the behest of the Court
11 because I wanted to find out what was going on. I understand
12 the complaints have been filed now. There is a stipulation to
13 extend the time to respond to the complaint, which the Court
14 will allow, until September 1st.

15 But I just wanted to find out what the status of the
16 case is, where we're going from here, when we can expect
17 perhaps -- I don't know if there are going to be motions to
18 dismiss. In any event, the Court needs to stay on top of the
19 scheduling in this case. Perhaps Mr. Shapiro can enlighten us.

12:12 20 MR. SHAPIRO: Yes, your Honor. As we advised Mr.
21 Nicewicz some weeks ago by telephone, we've reached a tentative
22 settlement agreement that has not been approved either by
23 Forest or by senior officials within the government.

24 We provided a draft written agreement to Forest on
25 August 3rd, so about just under two weeks ago. It's a lengthy

1 document. In conjunction with that agreement, if it were to be
2 finally executed, Forest also would execute a Corporate
3 Integrity Agreement with the Department of Health and Human
4 Services. That's an even lengthier document, I believe. And a
5 draft of that was -- A.J. (phon) provided a draft of that to
6 Forest this Monday, August 10th.

7 I expect -- well, one further component of a final
8 settlement and dismissal of this case would be a settlement
9 agreement or agreements between Forest and the various state
10 parties. We are not involved in that directly. I believe that
11 once the government and Forest reach agreement on a settlement,
12 a written settlement document, that the states will use that as
13 the basis for their agreement.

14 We haven't yet received comments from Forest on our
15 draft. They've indicated to us that they expect to do so in
16 the near future, I think in the next couple weeks. They can
17 speak to that. Both our agreement and the CIA, as I mentioned,
18 are lengthy agreements. I expect they will take some time to
19 negotiate. The government stands ready to negotiate and to
12:13 20 respond as quickly as it can to any comment that Forest has.

21 THE COURT: All right. Thank you, Mr. Shapiro.

22 MR. SHAPIRO: You're welcome.

23 THE COURT: Who's going to be speaking for Forest?
24 Mr. Tahbaz?

25 MR. TAHBAZ: Yes, your Honor. Thank you very much and

1 let me add my thanks for your Honor granting the pro hac
2 motions this morning.

3 We are pleased that we have reached what we would
4 describe as a settlement in principal with the federal
5 government, which includes a payment that will be allocated to
6 the state Medicaid parties as well. We would concur with Mr.
7 Shapiro's description of the documents in play and the timing.

8 The federal settlement agreements, while it does not
9 address specifically the allocation of proceeds to the states,
10 does contain some mechanisms -- another sort of aspect of what
11 needs to be negotiated here is the mechanism for allocating the
12 monies to the specific states. And we've started discussions
13 with NAMFCU, the National --

14 THE COURT: How many states -- there are 22 named.
15 But I think only 11 have appeared, is that right?

16 MR. TAHBAZ: That is our understanding as well. But
17 our understanding of how these settlements work is that Forest
18 has agreed to pay an amount of money that will be divided
19 between the federal government and all of the state Medicaid
12:15 20 parties if they wish to settle with Forest.

21 In our preliminary discussions with the National
22 Association of Medicaid Fraud Control Units, or NAMFCU, it is
23 our understanding that they will work with us to negotiate a
24 template settlement agreement, which they will then essentially
25 go out and recommend to all of the 50 states Medicaid's

1 programs and the District of Columbia. Even though there are
2 only 11 states plus the District of Columbia appearing in these
3 cases as interveners, our understanding is that all of the
4 states will have the opportunity to come in and participate in
5 the settlement and enter into settlement agreements with
6 Forest.

7 The one other piece of this that's contemplated in the
8 draft settlement agreement that we have from the federal
9 government that we are in the process of negotiating is the
10 attorney fees' claims of relators.

11 THE COURT: Of the whom?

12 MR. TAHBAZ: Of the relators, pursuant to the Qui Tam
13 Statute.

14 THE COURT: Thank you, Mr. Tahbaz. Do the relators
15 wish to be heard in any respect?

16 MS. DURRELL: Thank you, your Honor. I'll give you a
17 brief status from our point of view if that's okay.

18 We do have under the False Claims Act Statute a
19 statutory right to attorney's fees and costs, as Mr. Tahbaz
20 alluded to. So we have provided that information to Forest and
21 are beginning discussions with them to resolve that, hopefully,
22 at the same time that the federal settlement agreement is
23 resolved.

24 My client also has a statutory claim for retaliation
25 in his employment by Forest. We've also begun discussions with

1 Forest to, hopefully, settle that matter as well and have that
2 resolved at the same time as the federal settlement agreement.

3 THE COURT: All right. Thank you, Miss Durrell.

4 MS. DURRELL: Thank you.

5 THE COURT: Either of the other relators wish to be
6 heard?

7 MR. MAGNANNI: I'll jump in for a second, your Honor.

8 We do not have an H claim against Forest under the False Claims
9 Act, so all we're doing is actually collecting up our fees.

12:17 10 Our case actually goes back to another matter from 2000, so
11 it's a lengthy process. But once we have it collected, we'll
12 have discussions with Forest counsel and, hopefully, be able to
13 resolve it at the same time we settle everything else.

14 THE COURT: Thank you, Mr. Magnanni.

15 MR. MAGNANNI: Very good, your Honor.

16 THE COURT: I guess, bottom line, where does that
17 leave us with respect to responsive pleadings that are due
18 September 1st? And what is -- is there any likelihood of a
19 motion being filed jointly or individually by any party at this
12:18 20 stage?

21 MR. TAHBAZ: Your Honor, we would suggest,
22 respectfully, that it makes sense here to give the parties an
23 additional period of time to finalize the settlement
24 documentation. We have every expectation that the case will --
25 the settlement will become final, will be consummated.

1 THE COURT: What is the length of that time that you
2 are requesting?

3 MR. TAHBAZ: We would request 90 days from September
4 1st, which we believe will give us time to negotiate the
5 settlement agreement, negotiate the Corporate Integrity
6 Agreement, which is a very long and complicated agreement.

7 THE COURT: So we're talking the end of November?

8 MR. TAHBAZ: December 1st.

9 THE COURT: Everybody agrees with that?

12:18 10 MR. SHAPIRO: The government doesn't oppose. The
11 government hopes that this could be completed sooner than that,
12 but we don't oppose Forest's request.

13 THE COURT: What is the understanding with respect to
14 the responsive pleadings? Will they be filed on September 1st?

15 MR. TAHBAZ: We would ask the Court to extend the
16 dates for filing responsive pleadings. It seems to make no
17 sense from our perspective to spend time working on responsive
18 pleadings now which would take resources away from working on
19 the settlement papers.

12:19 20 THE COURT: I certainly understand that there is a
21 major undertaking that you are engaged in, trying to settle a
22 very complex series of litigation. The time doesn't appall me,
23 other than the fact that, as you all know, these cases being as
24 old as they are, show up in my record as being delinquent in a
25 way.

1 I understand the reasons for that, and I'm willing to
2 suffer the pangs of whatever I have to suffer in order to
3 resolve this case. So unless the government is opposed to it
4 for some reason, I will allow a 90-day extension and expect
5 that this will be the last one, that if we are not fully
6 resolved by -- I like to use the last day of the month. I
7 don't know what difference it makes. We'll say November 30th.
8 It just keeps it in mind that during that month of November
9 you've got to resolve it.

12:20 10 And if we don't, then we will schedule a status
11 conference for shortly thereafter. Let's say the first week of
12 December, at which point we will set an aggressive scheduling
13 conference, meaning responsive pleadings, and for whatever else
14 we need to do from there.

15 In fact, I think counsel should expect that on that
16 date -- let's pick out a date. Thursday, December 3, 2009, at
17 3 p.m., we will have a status conference unless, in the
18 intervening time, I'm notified that we have a confirmed
19 settlement.

12:21 20 And at that status conference I will be expecting to
21 set out a scheduling order. As you probably know, normally
22 when we have a scheduling conference, you have 60 days in order
23 to prepare for it. But I want counsel to understand that
24 because of the nature of this case that it is likely -- I want
25 you to come armed with some suggestions for dates and,

1 hopefully, total agreement on what dates will be the deadlines
2 for discovery. And it will be an aggressive scheduling order
3 at that stage, the Gobble case then being, what, seven years
4 old or nearly seven years old and the other one five.

5 Is there anything else that needs to come to my
6 attention? Mr. Shapiro?

7 MR. SHAPIRO: Two brief points. One is, it may well
8 be -- in fact, it's likely that the federal government will
9 reach a settlement with Forest before the states and that will
10 become a public -- there will be a public announcement. And
11 that dismissal may well happen before the state cases are
12 dismissed.

13 THE COURT: By the "state cases," you mean --

14 MR. SHAPIRO: The state parties may not dismiss their
15 claims in the same two cases while the federal government may
16 dismiss its claims.

17 THE COURT: As of now, unless I'm mistaken, there are
18 11 states and the District of Columbia who are parties to this
19 litigation or am I wrong?

12:22 20 MR. SHAPIRO: That's approximately correct. I don't
21 remember how many actually filed --

22 THE COURT: They are, as of now, parties plaintiff to
23 this case?

24 MR. SHAPIRO: Correct. That's one point.

25 The other is regarding your record. This is something

1 that I haven't heard of done here, by other districts,
2 including the Eastern District of Philadelphia, which also has
3 a lot of Qui Tam cases.

4 THE COURT: Where?

5 MR. SHAPIRO: I'm sorry. Pennsylvania, in
6 Philadelphia.

7 The judges there have expressed similar concerns. And
8 some of them, I understand, employ a suspense docket and
9 put these cases on a suspense docket.

12:23 10 THE COURT: Administratively closing the case. We've
11 talked about that.

12 MR. SHAPIRO: If it's something you'd like to explore,
13 we're willing to explore it.

14 THE COURT: Thank you. I'll look into that. I think
15 it's unlikely in this district that we'll employ that ruse, if
16 you will.

17 So is there anything else that counsel need to have my
18 attention for at this stage when we're all gathered here?

19 If not, then I encourage you and applaud your efforts
12:23 20 for working hard and diligently at resolving it. And I fully
21 expect that on or before November 30th I will hear that there
22 is a resolution of this matter to the extent that the parties
23 here can make it happen.

24 So we're adjourned. Thank you.

25 (Whereupon, at 12:24 p.m. the hearing concluded.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
of the record of proceedings in the above-entitled matter to
the best of my skill and ability.

/s/Cheryl Dahlstrom

08/19/2009

Cheryl Dahlstrom, RMR, CRR

Dated

Official Court Reporter